Turning off the Spigot: How Sentencing Safety Valves can Help States Protect Public Safety and Save Money

MOLLY M. GILL

Government Affairs Counsel, FAMM (Families Against Mandatory Minimums)

Foreword

Pennsylvania State Senator Stewart Greenleaf

During the 1980s and 1990s, lawmakers with good intentions, I being one of them, voted to enact many mandatory minimum sentences in an effort to reduce crime. Lawmakers across the country were led to believe that mandatory minimum prison sentences were necessary to remove drug dealers from the streets and stop the flow of illegal drugs into our communities. This national movement toward harsh punishment has had the opposite effect of its intentions, as my home state of Pennsylvania and many other states have seen an unprecedented increase in their inmate populations without a proportionate benefit to public safety.

Mandatory minimums are a one-size-fits-all approach to sentencing that have taken away judges' discretion and force the sentencing of offenders without consideration of the individual circumstances of a case. Mandatory sentences have been extended from applying to "big-time dealers" to many smaller fish who deal drugs to support their own addiction. At least two-thirds of our inmates have drug addiction issues. Mandatory minimums have been a driving force behind Pennsylvania's inmate population increase from 8,000 in 1980 to 51,000 in 2011.

FAMM's work on fair sentencing issues is changing attitudes here in Pennsylvania and across the country as many states are now moving toward fairer sentencing practices. FAMM has provided valuable advice and insight to the Pennsylvania Senate Judiciary Committee and to me personally as we work toward prison reform.

This report examines several states' "safety valve" statutes — legislation that allows judges to bypass a mandatory sentence under certain circumstances. I support legislation that would provide a safety valve for cases where the mandatory minimum sentence would be unjust. A federal law providing for a safety valve was enacted in 1994. Since that time nearly 80,000 federal drug offenders facing mandatory minimum sentences have received the benefit of the safety valve, saving the federal government an estimated $25,000 per prisoner, per year for each year shaved off of the sentence. About one-third of states have enacted some type of safety valve statute, with considerable cost savings and without a reduction in public safety.

Just as I was once an advocate for harsher, longer sentences, I am now at the forefront of the movement to balance our criminal justice system in favor of more rehabilitation and judicial discretion. In Pennsylvania, we have recently made great progress with landmark alternative sentencing statutes, and I hope that soon mandatory minimums will be more widely accepted as an area in need of reform.

The following report should serve as a guide to lawmakers and policy advisors across the country who are seeking to reduce their states' inmate populations and save precious resources currently spent on incarceration. FAMM has demonstrated that we can be tough on crime as well as smart on crime.

Pennsylvania State Senator Stewart J. Greenleaf (R-Montgomery/Bucks) is chairman of the Senate Judiciary Committee. He has represented the 12th Senatorial District in the Pennsylvania Senate since 1978. He was a member of the Pennsylvania House of Representatives from 1977 to 1978, serving on the House Labor Relations and Judiciary Committees as well as the Subcommittee on Crime and Corrections. He served as an Assistant District Attorney and Chief of the Appeals Division for the Montgomery County District Attorney's Office and as an Assistant Public Defender in Bucks County.

The Rising Costs and Shrinking Benefits of Mass Incarceration

After watching the crime rate steadily rise during the 1970s, state and federal policymakers decided that it was time to "get tough" on crime. Legislators began passing new anti-crime laws that sent more people to prison and sent them for longer terms. As crime rates declined, policymakers continued to pass new mandatory minimum sentencing laws – laws that require judges to impose automatic, fixed-length prison sentences for specified offenses. Mandatory minimum laws had been around since the beginning of the country, but legislators began to rely on them as solutions to a growing number of offenses, especially drug crimes.

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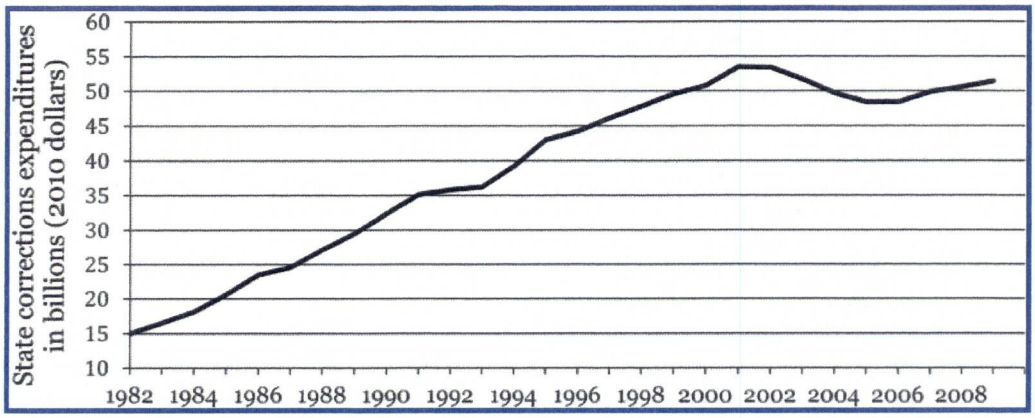
Figure 1
State corrections spending has skyrocketed since the 1980s



Although locking up more offenders was a logical response to combating crime — and, indeed, is believed to have played a role in reducing the crime rate[1] — lawmakers did not consider the cost or, more importantly, cost-ineffectiveness of longer prison terms.[2] The results, however, should have surprised no one. The huge rise in prison populations led to skyrocketing state corrections budgets. Overall, state spending on corrections has risen more than 300 percent over the past two decades. Taxpayers are now footing a bill of more than $51 billion annually, which represents 7.3 percent of all state general fund spending.[3]

If the new, lengthy, mandatory sentences were necessary to keep their families and communities safe, taxpayers would have little cause to question their cost-effectiveness. In recent years, however, serious doubts have been raised about the efficacy of using mandatory sentences for nonviolent offenders. Indeed, according to the Pew Center on the States, "most criminologists now consider the increased use of prison for nonviolent offenders a questionable public expenditure, producing little additional crime control benefit for each dollar spent."[4]

Even the most ardent and influential past supporters of incarceration believe the "lock 'em up and throw away the key" strategy has gone too far. University of Chicago economist and author Steven D. Levitt wrote several influential papers in which he concluded that pro-prison policies were a major factor in reducing crime during the 1990s. He later found, however, that as the crime rate continued to drop and the prison population continued to grow, the return on public safety diminished. "We know that harsher punishments lead to less crime, but we also know that the millionth prisoner we lock up is a lot less dangerous to society than the first guy we lock up," Dr. Levitt said. "In the mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration." And today? Dr. Levitt says, "I think we should be shrinking the prison population by at least one-third."[5]

States Take Lead in Rethinking Sentencing Policies

As overcrowded prisons began to squeeze their budgets, some states started to rethink the value of mandatory prison terms. For example, the Pennsylvania Sentencing Commission was ordered by Keystone State legislators to study its mandatory minimum laws and concluded that "neither length of sentence nor the imposition of a mandatory minimum sentence alone was related to recidivism."[6] A legislative analysis in Washington State found that while incarcerating violent offenders provides a net public benefit by saving the state more than incarceration costs, imprisonment of property and drug offenders leads to negative returns.[7]

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[1] Anne Morrison Piehl & Bert Useem, *Prisons, in* Crime and Public Policy 540-43 (James Q. Wilson and Joan Petersilia eds., 2011).

[2] Pew Center on the States, Time Served: The High Cost, Low Return of Longer Prison Terms 7 (June 2012), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf.

[3] *Id.*

[4] *Id.* (citing Raymond V. Liedka, Anne Morrison Piehl, & Bert Useem,*The Crime-Control Effect of Incarceration: Does Scale Matter?*, Criminology & Public Policy 245-76 (2006); Rucker Johnson & Steven Raphael, *How Much Crime Reduction Does the Marginal Prisoner Buy?* (Working paper, 2010), *available at* http://socrates.berkeley.edu/ruckerj/johnson_raphael_crimeincarcJLE.pdf).

[5] John Tierney, *For Lesser Crimes, Rethinking Life Behind Bars*, The N.Y. Times (Dec. 12, 2012), *available at* http://www.nytimes.com/2012/12/12/science/mandatory-prison-sentences-face-growing-skepticism.html?pagewanted=all&_r=0.

[6] Pennsylvania Commission on Sentencing, A Study on the Use and Impact of Mandatory Minimum Sentences 1 (Oct. 2009), *available at* http://www.scribd.com/doc/35882472/Pennsylvania-Mandatory-Sentences-Report.

[7] Time Served, *supra* note 2, at 7.

Many states did more than study the issue. They acted to reduce their prison population by adopting cost-effective sentencing and prison reforms. For example, New York, Rhode Island, and Delaware repealed most of their drug-related mandatory minimum laws. Other states have limited the reach of their mandatory sentencing laws or increased the thresholds for felony offenses so that lower-level offenders would not take up scarce prison space. Prison reform leaders in Texas spared taxpayers the expense of building new prisons by investing more in diversion and community corrections programs. As a result, Texas avoided nearly $2 billion in anticipated prison costs. More importantly, the crime rate in Texas has fallen faster than the national crime rate in every category of crime, from violent to property crime.[8]

These state reforms did not jeopardize public safety. To the contrary, the Pew Center on the States found that all 17 states that cut their imprisonment rates over the past decade also experienced a decline in crime rates.[9]

Turning Off the Spigot: Sentencing Reform is Smartest Reform

Though states have used different strategies for combating inefficient prison spending, the wisest chose front-end reforms, such as repealing or limiting the reach of mandatory minimums. Why is this approach preferable? Imagine your bathtub is overflowing and you notice that the water spigot was left wide open. What would you do first: turn off the spigot or open the tub's drain a little? Though you might eventually do both, the obvious first step is to stop the flow of new water. You need to turn off the spigot.

To prevent prisons from being overfilled with low-level offenders who do not pose a real risk to public safety, states should turn off the spigot by reforming the laws that impose lengthy, mandatory sentences. The best course is to repeal mandatory minimum laws so that judges can craft sentences to fit the unique circumstances of each crime and offender. Where that option is not possible – either because of political or legislative realities – states should adopt sentencing "safety valve" laws, which prevent mandatory minimum sentences from being imposed in cases where they are not appropriate.

How a Safety Valve Works

A safety valve is a law that authorizes the sentencing court to give an offender who would otherwise receive a mandatory minimum sentence less time in prison than the required minimum. Some safety valve laws give judges wide discretion to avoid an ill-fitting mandatory minimum. Other safety valves authorize judges to depart from the minimum if the offender or his offense meets certain special requirements. For example, Congress enacted a drug offense safety valve in 1994 after it realized that many first-time, low-level, and nonviolent drug offenders were receiving mandatory minimums that did not fit them or their crimes. The federal safety valve is a strict, five-part test. If – and only if – all five requirements in the law are met, the court may sentence a person below the mandatory minimum, generally by using the federal advisory sentencing guidelines to create a sentence that fits the offender and his crime.[10]

Each year, about 25 percent of federal drug offenders who would otherwise be sentenced to mandatory minimums receive the benefit of the safety valve.[11] Since 1995, courts have waived mandatory minimums for almost 80,000 federal drug offenders, saving taxpayers hundreds of millions of dollars in unnecessary prison costs. During this same period, the nation's crime rate has dropped to its lowest level in a generation.

State Safety Valves

Several states also have safety valve provisions in their codes. Some, like the federal safety valve, apply only to drug offenses, but others apply to other types of crimes.

Minnesota's safety valve, for example, is used in firearm offenses. The state has one-, three-, and five-year consecutive mandatory minimum sentences for using or displaying a gun or dangerous weapon while committing certain offenses, including many violent offenses (murder, assault, robbery, sex offenses) and drug crimes.[12] As a result of Minnesota's safety valve provision, courts may sentence some of these offenders below the mandatory minimums whenever the court finds "substantial and compelling reasons to do so."[13] This relatively broad safety valve has saved Minnesotans lots of money without jeopardizing public safety. In 2010, 48 percent of Minnesota offenders subject to these mandatory minimums received the safety valve. On average, their sentences were 38 months shorter than those of people who

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[8] Vikrant P. Reddy, *Texas Crime Rate Falling Faster Than the National Crime Rate, at* http://www.rightoncrime.com/2012/09/post-needs-editing-department-of-justice-focuses-on-victims/ (last visited Mar. 15, 2013).

[9] Time Served, *supra* note 2, at 7.

[10] To qualify for the federal safety valve, the court must find that (1) no one was harmed during the offense; (2) the offender has little or no history of criminal convictions; (3) the offender did not use violence or a gun; (4) the individual was not a leader or organizer of the offense; and (5) the offender told the prosecutor all that he knows about the offense. 18 U.S.C. § 3553(f) (2012).

[11] *See* U.S. Sentencing Commission, 2011 Sourcebook of Federal Sentencing Statistics, Tbl. 44 (2012), *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/sbtoc11.htm.

[12] Minn. Stat. § 609.11 (2012)

[13] Minn. Stat. § 609.11, subd. 8.

received the mandatory minimum, saving Minnesota almost 1,200 prison beds and $37.5 million in prison costs. At the same time, violent crime in Minnesota has steadily declined since 2006, falling another 2.9 percent in 2010.[14]

New York also has a safety valve that applies to certain gun offenses: namely, criminal use of a firearm in the first degree.[15] Normally, an offender who possesses a gun while committing certain violent felonies will be subject to an additional mandatory minimum sentence of five years. But the New York law gives the court discretion to ignore the mandatory sentence "if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime."[16]

Connecticut law includes a safety valve for drug-related offenses. To avoid the mandatory minimum, a defendant must not have used or threatened to use physical force in the commission of his crime and must show "good cause" why a sentence lower than the statutory minimum is appropriate.[17]

Meanwhile, courts in Maine are authorized to impose sentences below the mandatory minimums for drug trafficking offenses if, among other things, they find that imposing the minimum would "result in a substantial injustice to the defendant." The law also requires the court to find that failure to impose a minimum sentence "would not have an adverse effect on public safety."[18] Oregon and Montana have broader safety valve provisions. Oregon's safety valve authorizes judges to sentence below the statutory minimum for a variety of crimes, including kidnapping, second-degree manslaughter, certain second-degree sex offenses, and repeat property offenders. To sentence a person below the mandatory minimum term, the court must make certain findings on the record at sentencing, depending on the offense in question (e.g., age and relationship of victim and/or offender; defendant's criminal history; lack of significant injury to the victim, etc.). The court must also determine that "a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence."[19] Examples of substantial and compelling reasons include: the defendant played a minor or passive role in the crime; the harm caused was significantly less than what is typically caused during similar offenses; and the court finds that a treatment program is likely to be more effective in reducing recidivism.[20] Montana's safety valve, which also applies to a wide list of violent and nonviolent offenses, allows courts to give sentences below the mandatory minimum if the offender was a minor, had a significantly impaired mental capacity, committed the crime under unusual or substantial duress, was an accomplice who played a minor role, or when the crime did not involve a weapon or serious injury to the victim.[21]

The State of Virginia adopted a safety valve for drug cases that mirrors the federal safety valve. To impose a sentence below the statutory mandatory minimum, a Virginia court must find that (1) the defendant does not have a prior conviction for certain felony offenses; (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon; (3) the offense did not result in death or serious bodily injury to any person; (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense; and (5) the defendant tells prosecutors all he knows about the offense.[22]

New safety valve proposals have been introduced in other states. In Georgia, Governor Nathan Deal and the legislature created a special council to develop recommendations to reduce corrections spending. In November 2011, the council, comprising judges, prosecutors, and state lawmakers, issued its report and recommendations.[23] Included among its recommendations was the adoption of a broad safety valve for drug trafficking offenses that would permit judges to impose shorter prison sentences in situations where "the interests of justice are served by a reduced minimum sentence" and "public safety is likely to be improved with expedited access to risk-reduction programs."[24] In February 2013, Governor Deal and key lawmakers introduced legislation to implement a safety valve in drug-related cases.[25] Their proposal borrows from the federal safety valve and authorizes courts to impose a shorter prison term if: (1) the defendant was not a leader/organizer of the offense; (2) the defendant did not use a weapon; (3) the defendant's conduct did not result in death or

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[14] State of Minnesota Dep't of Public Safety, Uniform Crime Report 2010 10, 12, Fig. 1 (July 2011), *available at* https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2010%20State%20Crime%20Book.pdf.

[15] N.Y. PEN. LAW § 265.09(1) (2012).

[16] N.Y. PEN. LAW § 265.09(2).

[17] *See* CGS § 21a-283a (2012).

[18] *See* 17-A MRS § 1252(5)(A-C) (2012).

[19] *See* ORS 137.712 (2012).

[20] *See* OAR 213-008-0002 (2012).

[21] *See* MCA § 46-18-222 (2012).

[22] *See* Va. Code Ann. § 18.2-248 (2012).

[23] Special Council on Criminal Justice Reform, Report of the Special Council on Criminal Justice Reform for Georgians (Nov. 2011), *available at* http://www.legis.ga.gov/Documents/GACouncilReport-FINALDRAFT.pdf.

[24] *Id.* at 22.

[25] HB 349, 151st Gen. Assem., Reg. Sess. (Ga. 2013), *available at* http://www.legis.ga.gov/Legislation/20132014/134497.pdf. HB 349 was signed into law on April 25, 2013, and becomes effective July 1, 2013.

substantial bodily injury; (4) the defendant does not have a prior felony conviction; and (5) the interests of justice would not be served by forcing the defendant to serve the mandatory minimum prison sentence.

In Pennsylvania, Senate Judiciary Committee Chairman Stewart Greenleaf introduced a safety valve provision that would allow a judge to depart below a mandatory minimum if he or she believes "a substantial injustice would occur" from imposing the minimum.[26] Offenders with significant prior criminal records and those who use a firearm or other dangerous weapon are not eligible for safety valve relief.

The Benefits of a Safety Valve

For policymakers concerned with improving the criminal justice system in ways that keep their communities and neighborhoods safe while not asking more from taxpayers than is necessary, a sentencing safety valve has many benefits:

- **Protect public safety.** Safety valves do not mean that people will avoid prison time, just that they don't get any *more* prison time than is necessary. Safety valves reserve scarce prison space and resources for people who pose a real threat to the community, and they help prevent prison overcrowding.
- **Give courts flexibility to punish enough – but not too much.** Safety valves allow courts – in some circumstances – to sentence a person below the mandatory minimum if that sentence is too lengthy, unjust or unreasonable, or doesn't fit the offender or the crime. For example, a safety valve allows the court to avoid nonsensical outcomes, such as a first-time drug courier getting the same sentence as a major drug kingpin.
- **Save taxpayers money.** When courts sentence people below the mandatory minimum, people spend less time in prison than they otherwise would be required to, which costs taxpayers less in corrections costs. These savings can be returned to taxpayers, invested in more effective anti-crime strategies (e.g., more police on the street), or dedicated to other state needs, such as more teachers and better infrastructure.

Some worry that adoption of a safety valve will harm law enforcement by eliminating the threat of a severe, mandatory sentence. This threat, they believe, helps prosecutors convince defendants to plead guilty and cooperate against other offenders.[27] In response, it must be noted that passage of a safety valve will not eliminate prosecutors' leverage. A safety valve does not require a judge to give a lower sentence; it simply allows him or her to do so in special circumstances where the mandatory minimum is not reasonable or necessary. Many defendants will still choose to plead guilty to avoid the mandatory minimum, rather than "rolling the dice" and hoping a jury will acquit them or that a judge will find them eligible for a lower sentence.

A Model State Sentencing Safety Valve

FAMM believes that more states should follow the lead of those that have repealed their mandatory minimum sentencing laws. Where that is not possible, state policymakers should adopt sentencing safety valves to ensure that expensive prison space is reserved for the most serious and dangerous offenders. As discussed above, different states have adopted different types of safety valves, i.e., some apply to all crimes while others apply only to drug offenses. One of the benefits of the safety valve approach is that it allows lawmakers to tailor the law to the needs and desires of their state.

Consider the following model safety valve language:

> Notwithstanding any other provision of law, when sentencing a person convicted of a violation for which there is a mandatory minimum sentence, the court may depart from the prescribed mandatory minimum sentence if the court finds that a substantial injustice would occur by applying the mandatory minimum sentence.

This model language would authorize state courts to impose a shorter sentence if it finds that the length of the mandatory minimum sentence would cause "a substantial injustice" to occur. This broad safety valve reflects the fact that mandatory minimum sentences sometimes produce ill-fitting, unreasonable sentences and that courts should have the ability to modify sentences in those rare and unusual cases.

For a variety of reasons, state policymakers might want to tailor a proposed safety valve, at least initially, to certain types of cases or to limit a judge's discretion to utilize the safety valve. A safety valve can be tailored in two key ways:

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[26] SB 1205, Gen. Assem., Reg. Sess. (Pa. 2011-2012), *available at* http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2011&sind=0&body=S&type=B&BN=1205.

[27] *See* U.S. Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System 125-27 (Oct. 2011), *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm.Recent evidence suggests that mandatory minimum sentences actually produce fewer guilty pleas. In its comprehensive 2011 report on federal mandatory minimum laws, the U.S. Sentencing Commission found that the threat of lengthy mandatory terms might actually motivate people to go to trial. According to the Commission, 94.1 percent of those convicted of an offense carrying a mandatory minimum pled guilty, while 97.5 percent of the offenders *not* facing a mandatory minimum pled guilty. *Id.* at 125. The Commission also found that "the longer the mandatory minimum penalty an offender faces, the less likely he or she is to plead guilty." *Id.* at 126. Notably, offenders who were eligible for the safety valve pled guilty at a higher rate (99.4 percent) than those offenders who were not eligible for safety valve relief (94.6 percent). *Id.* at 127.

(1) **Eligible offenders.** Policymakers can choose the offense and/or offenders that will be eligible for safety valve relief. For example, they might want to let judges depart in drug trafficking cases, but not those involving injury to a victim. Alternatively, states might choose to limit safety valve eligibility to offenders with little or no criminal background.

(2) **Standard for invocation.** Some states might want to authorize judges to impose a sentence below the statutory minimum to avoid a "substantial injustice," while others might choose to allow departures in cases where a judge finds that the minimum is "not necessary to ensure public safety" or a similar such standard.

The text of safety valve provisions from various states can found in Appendix A, and the language of the federal sentencing safety valve can be found in Appendix B.

Regardless of the approach state policymakers choose to take, they will find that a sentencing safety valve can help protect public safety while reducing unnecessary spending.

Appendix A: State Safety Valve Statutes

CONNECTICUT

The safety valve in Connecticut applies to drug offenses.

CGS § 21a-283a

Sec. 21a-283a. Court authorized to depart from imposing mandatory minimum sentence. Notwithstanding any provision of the general statutes, when sentencing a person convicted of a violation of any provision of this chapter, except a violation of subsection (a) or (c) of section 21a-278a, for which there is a mandatory minimum sentence, which did not involve the use, attempted use or threatened use of physical force against another person or result in the physical injury or serious physical injury of another person, and in the commission of which such person neither was armed with nor threatened the use of or displayed or represented by word or conduct that such person possessed any firearm, deadly weapon or dangerous instrument, as those terms are defined in section 53a-3, the court may, upon a showing of good cause by the defendant, depart from the prescribed mandatory minimum sentence, provided the provisions of this section have not previously been invoked on the defendant's behalf and the court, at the time of sentencing, states in open court the reasons for imposing the particular sentence and the specific reason for imposing a sentence that departs from the prescribed mandatory minimum sentence.

FLORIDA

A Florida safety valve applies to habitual offenders.

F.S. § 775.084(3)(a)(6)

6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a habitual felony offender or a habitual violent felony offender as provided in this subparagraph.

MAINE

The Maine safety valve applies to all drug trafficking offenses.

17-A MRS § 1252(5)(A-C)

5-A. Notwithstanding any other provision of this Code, for a person convicted of violating section 1105-A, 1105-B, 1105-C or 1105-D:

A. Except as otherwise provided in paragraphs B and C, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 4 years; when the sentencing class is Class B, the minimum term of imprisonment is 2 years; and, with the exception of a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the

sentencing class is Class C, the minimum term of imprisonment is one year; [2001, c. 383, §151 (AMD); 2001, c. 383, §156 (AFF).]

B. The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in paragraph A, if:
   (1) The court finds by substantial evidence that:
      (a) Imposition of a minimum unsuspended term of imprisonment under paragraph A will result in substantial injustice to the defendant. In making this determination, the court shall consider, among other considerations, whether the defendant did not know and reasonably should not have known that the victim was less than 18 years of age;
      (b) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not have an adverse effect on public safety; and
      (c) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not appreciably impair the effect of paragraph A in deterring others from violating section 1105-A, 1105-B, 1105-C or 1105-D; and
   (2) The court finds that:
      (b) [28] The defendant is an appropriate candidate for an intensive supervision program, but would be ineligible to participate under a sentence imposed under paragraph A; or
      (c) The defendant's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under paragraph A would frustrate the general purposes of sentencing set forth in section 1151.

   If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and [2003, c. 232, §1 (AMD).]

C. If the court imposes a sentence under paragraph B, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 9 months; when the sentencing is Class B, the minimum term of imprisonment is 6 months; and, with the exception of trafficking or furnishing marijuana under section 1105-A or 1105-C, when the sentencing class is Class C, the minimum term of imprisonment is 3 months. [2001, c. 383, §151 (AMD); 2001, c. 383, §156 (AFF).]

MINNESOTA

The Minnesota safety valve applies to gun offenses.

Minn. Stat. § 609.11, subd. 8

Subd. 8. Motion by prosecutor. (a) Except as otherwise provided in paragraph (b), prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum sentences established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the defendant without regard to the mandatory minimum sentences established by this section if the court finds substantial and compelling reasons to do so. A sentence imposed under this subdivision is a departure from the Sentencing Guidelines.

(b) The court may not, on its own motion or the prosecutor's motion, sentence a defendant without regard to the mandatory minimum sentences established by this section if the defendant previously has been convicted of an offense listed in subdivision 9 in which the defendant used or possessed a firearm or other dangerous weapon.

MONTANA

The Montana safety valve applies to all crimes.

MCA § 46-18-222

46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However,

[28] This is not a typo. The code does not contain a subsection (a) here.

a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination.

NEW YORK

The New York safety valve applies to criminal use of a firearm in the first degree.

N.Y. PEN. LAW § 265.09

(1) A person is guilty of criminal use of a firearm in the first degree when he commits any class B violent felony offense as defined in paragraph (a) of subdivision one of section 70.02 and he either:
   (a) possesses a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged; or
   (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.
   Criminal use of a firearm in the first degree is a class B felony.

(2) Sentencing. Notwithstanding any other provision of law to the contrary, when a person is convicted of criminal use of a firearm in the first degree as defined in subdivision one of this section, the court shall impose an additional consecutive sentence of five years to the sentence imposed on the underlying class B violent felony offense where the person convicted of such crime displays a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of such crime, provided, however, that such additional sentence shall not be imposed if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime. Notwithstanding any other provision of law to the contrary, the aggregate of the five year consecutive term imposed pursuant to this subdivision and the minimum term of the indeterminate sentence imposed on the underlying class B violent felony shall constitute the new aggregate minimum term of imprisonment, and a person subject to such term shall be required to serve the entire aggregate minimum term and shall not be eligible for release on parole or conditional release during such term. This subdivision shall not apply where the defendant's criminal liability for displaying a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of this chapter.

OREGON

Oregon has a safety valve for numerous crimes, and the required court findings vary depending on the offense of conviction.

137.712 Exceptions to ORS 137.700 and 137.707.

(1)
   (a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395, unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other statute.
   (b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this subsection;
(B) A sentence of probation will be more effective than a prison term in reducing the risk of offender recidivism; and
(C) A sentence of probation will better serve to protect society.

(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on the record by a preponderance of the evidence:
(a) If the conviction is for manslaughter in the second degree:
(A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years of age;
(B) That the defendant is the mother or father of the victim;
(C) That the death of the victim was the result of an injury or illness that was not caused by the defendant;
(D) That the defendant treated the injury or illness solely by spiritual treatment in accordance with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual treatment would bring about the victim's recovery from the injury or illness;
(E) That no other person previously under the defendant's care has died or sustained significant physical injury as a result of or despite the use of spiritual treatment, regardless of whether the spiritual treatment was used alone or in conjunction with medical care; and
(F) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section or for criminal mistreatment in the second degree.
(b) If the conviction is for assault in the second degree:
(A) That the victim was not physically injured by means of a deadly weapon;
(B) That the victim did not suffer a significant physical injury; and
(C) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.
(c) If the conviction is for kidnapping in the second degree:
(A) That the victim was at least 12 years of age at the time the crime was committed; and
(B) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.
(d) If the conviction is for robbery in the second degree:
(A) That the victim did not suffer a significant physical injury;
(B) That, if the defendant represented by words or conduct that the defendant was armed with a dangerous weapon, the representation did not reasonably put the victim in fear of imminent significant physical injury;
(C) That, if the defendant represented by words or conduct that the defendant was armed with a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical injury; and
(D) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.
(e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual abuse in the first degree:
(A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the offense;
(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;
(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;
(D) That the defendant was no more than five years older than the victim at the time of the offense;
(E) That the offense did not involve sexual contact with any minor other than the victim; and
(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense.
(f) If the conviction is for unlawful sexual penetration in the second degree:
(A) That the victim was 12 years of age or older at the time of the offense;
(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;
(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;
(D) That the defendant was no more than five years older than the victim at the time of the offense;
(E) That the offense did not involve sexual contact with any minor other than the victim;
(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense; and
(G) That the object used to commit the unlawful sexual penetration was the hand or any part thereof of the defendant.

(3) In making the findings required by subsections (1) and (2) of this section, the court may consider any evidence presented at trial and may receive and consider any additional relevant information offered by either party at sentencing.

(4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section refer are:
(a) A crime listed in ORS 137.700 (2) or 137.707 (4);
(b) Escape in the first degree, as defined in ORS 162.165;
(c) Aggravated murder, as defined in ORS 163.095;
(d) Criminally negligent homicide, as defined in ORS 163.145;
(e) Assault in the third degree, as defined in ORS 163.165;
(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);
(g) Rape in the third degree, as defined in ORS 163.355;

(h) Sodomy in the third degree, as defined in ORS 163.385;
(i) Sexual abuse in the second degree, as defined in ORS 163.425;
(j) Stalking, as defined in ORS 163.732;
(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person felony under the rules of the Oregon Criminal Justice Commission;
(L) Arson in the first degree, as defined in ORS 164.325;
(m) Robbery in the third degree, as defined in ORS 164.395;
(n) Intimidation in the first degree, as defined in ORS 166.165;
(o) Promoting prostitution, as defined in ORS 167.012; and
(p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L) of this subsection.

VIRGINIA

The Virginia safety valve, like the federal safety valve, establishes a five-part test for eligibility for a sentence below the mandatory minimum term for a drug offense.

VA. CODE ANN. § 18.2-248

The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall not be applicable if the court finds that:

a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;
b. The person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so;
c. The offense did not result in death or serious bodily injury to any person;
d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I; and
e. Not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Appendix B: Federal Safety Valve Statute

The federal safety valve applies to drug offenses only.

18 U.S.C. § 3553(f)

(f) Limitation on Applicability of Statutory Minimums in Certain Cases. - Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that -

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;
(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
(3) the offense did not result in death or serious bodily injury to any person;
(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Acknowledgments

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50 YEARS of INNOVATION 1961–2011

VERA INSTITUTE OF JUSTICE

CENTER ON SENTENCING AND CORRECTIONS

The Potential of Community Corrections to Improve Safety and Reduce Incarceration

JULY 2013

Executive Summary

As the size and cost of jails and prisons have grown, so too has the awareness that public investment in incarceration has not yielded the expected return on public safety. Today, in the United States, an opportunity exists to reexamine the wisdom of our reliance on institutional corrections—incarceration in prisons or jails—and to reconsider the role of community-based corrections, which encompasses probation, parole, and pretrial supervision. However, it could also be an opportunity wasted if care is not taken to bolster the existing capacity of community corrections.

States and counties are moving to shift the burden from institutional to community corrections, sending greater numbers of offenders to supervision agencies with heightened expectations of success but often without the additional resources necessary to do the job that is being asked of them. The well-worn adage about building a plane while flying it seems an apt description of where community corrections finds itself in 2013.

There is considerable variability within and across states in the way community corrections is organized and financed. Agency responsibilities and accountability also differ. This report begins with a summary of what constitutes community corrections today and what are best practices, and then describes the efforts of some states to reshape their work (which are identified in the report as "state spotlights").

While many states have begun to transform their community corrections, much remains to be done. In some states, efforts to build capacity, attract new resources, and contribute in significant ways to public safety are at the starting place of educating policymakers and stakeholders on the function and purpose of supervision. In other jurisdictions, agencies are working to integrate proven practices into their operations but face challenges, including a lack of resources and opposition by both policymakers and agency staff to new ways of doing business. States and counties have also begun experimenting with new technologies and practices in their supervision to more efficiently and safely manage offenders in the community. However, some of these approaches have yet to be rigorously evaluated to prove their effectiveness. This report includes a discussion of practices that are attracting interest from the community corrections field, yet require additional research to determine if their intended outcomes are being achieved.

With mounting pressure on community supervision agencies to ease strained budgets, reduce institutional crowding, and provide a greater return on public safety dollars, it is urgent that policymakers and the public work together to develop a much greater understanding of what is possible for these agencies to achieve and what it will take to get there. In particular, leaders in the field need to develop:

- a major change in the culture that has dominated supervision agencies for at least the last 30 years;
- an investment of resources to enable agencies to adopt evidence-based practices;
- a realistic plan for agency transformation;
- a commitment to monitor and measure outcomes and what works; and
- an understanding among the courts, legislature, and executive-branch agencies of their role in enabling supervision agencies to deliver on public safety expectations.

With this report, Vera's Center on Sentencing and Corrections provides an overview of the state of community corrections, the transformational practices emerging in the field, and recommendations to policymakers on realizing the full value of community supervision to taxpayers and communities.

FROM THE CENTER DIRECTOR

When I first began working in corrections more than 30 years ago, the impact of Robert Martinson's assessment that "nothing works" in community corrections (made famous by his 1974 article, "What Works: Questions and Answers about Prison Reform") was just beginning to be felt. Minnesota's first-in-the-nation sentencing guidelines were starting to draw attention and, a few years later, in 1982, Peter Greenwood and his colleagues at Rand were writing for the National Institute of Justice on the value of selective incapacitation through incarceration in preventing crime. The combination of those three developments over the space of just a few years had a profound impact on corrections, especially community corrections, and left the field with many of the problems described in this report.

But those same 30 years, with the availability of faster, cheaper data systems and the leadership of key researchers in Canada and the United States, have seen the emergence of new and compelling findings on what *does work* in community corrections and given confidence to more and more policymakers to put those research results into policy.

This report is a review of the current state of community corrections and the new practices and exciting policy changes emerging in the states. But it is also a caution: Change never arrives overnight; it needs support—both political and fiscal—to succeed. Or we could be looking at a return to the days of "nothing works."

Peggy McGarry
Director, Center on Sentencing and Corrections

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Introduction

Community corrections agencies that incorporate practices supported by good research, are adequately resourced in staff and services, and enjoy the understanding and support of the courts and policymakers have the potential to achieve great results.

In the last 40 years, the number of people confined in state prisons—sometimes referred to as institutional corrections—has increased more than 700 percent, reaching 1.4 million in 2010.[1] States built prisons in response to federal incentives and to accommodate the impact of changes to their own sentencing laws and policies. The cost of housing prisoners grew along with the rate of incarceration—often becoming the second largest expenditure from a state's general fund. A recent Vera Institute of Justice (Vera) study of 40 states found that in 2011 the average annual cost per inmate was $31,286 when all prison costs were included.[2]

In the wake of the 2008 recession, states and counties grappling with widening budget shortfalls have frequently targeted institutional corrections for cuts. After exhausting operational efficiencies without solving the problem, policymakers in a number of states have again turned to making changes in sentencing law and policy—but, this time, as a means to move inmates out of expensive prison and jail beds and into what's known as community corrections: probation, parole, or pretrial supervision.

When adequately resourced and carefully planned, community supervision can be an effective response to criminal behavior for both justice-involved individuals and communities. Without additional investments, however, redirecting more defendants and offenders into existing systems may not generate the cost-savings or public safety outcomes policymakers are seeking. With more than five million adults already on probation and parole supervision in 2009, the population increases that will follow recent legislative efforts are likely to put significant stress on supervising agencies.

As Vera staff have monitored legislation across the country over the last five years and assisted agencies charged with its implementation, we have observed a certain amount of anxiety and fear among those in the field. What will happen if this shift in policy fails? What will be the reaction if an inadequately, ineffectively managed parolee or probationer commits a terrible crime? Will states and counties turn their backs on the idea that they can achieve public safety *and* reduce incarceration?

Community corrections agencies that incorporate practices supported by good research, are adequately resourced in staff and services, and enjoy the understanding and support of the courts and policymakers have the potential to achieve great results. Community-based corrections supervision is less expensive than prison or jail and can be a source of positive change for communities. By keeping individuals in the community and offering supervision, intervention, and services that are responsive to their risk and needs to prevent reoffending, community supervision can improve public safety and, with it, the viability of neighborhoods that are most affected by crime and large numbers of people returning from prison.

Defendants and offenders who are not incarcerated have the opportunity to remain with their families, retain employment, and participate in treatment or other programming within the natural context of their lives—as opposed to the unnatural setting of a prison or jail.[3] Drug and mental health treatment, job skills training, and behavioral interventions delivered in the community have long been demonstrated to be more effective than those offered behind bars.[4]

These results, however, are only possible with adequate planning and resources. With a larger population, the quality of supervision may suffer if community corrections officers have to struggle to manage increased caseloads without the training, support, and tools they need. In addition, an increase in the number of people being sent to community supervision likely means more higher-risk offenders who have a greater need of treatment and other assistance to prevent reoffending. If resources remain unchanged, officers may be unable to refer to or provide needed services and treatment. Overworked and under-resourced officers may act more quickly to revoke to prison or jail those who do not meet conditions immediately and completely or those supervisees whose risk they worry they cannot manage given the demands on their time—only delaying rather than solving over-incarceration. Finally, agencies that lack the resources to adequately supervise offenders may even contribute to increased crime in the community. Not only would this be tragic for victims and the community, it might also generate a backlash against community corrections among policymakers, potentially setting the U.S. on another course of incarceration-based criminal justice policy.

The current focus on community corrections could be a moment of enormous opportunity, but desired public safety and budgetary outcomes will come about only if policymaking is well-informed and thoughtful, and is accompanied by upfront investment in capacity building for affected agencies.

What is Community Corrections?

Community corrections supervises people who are under the authority of the criminal justice system but who are not in prison or jail. In 2009, more than five million people in the United States were supervised in the community by the criminal justice system.[5] This figure includes people at many different stages of the criminal court process. Most people under community supervision fall into one of the following categories:

> defendants on pretrial release with open, active cases in court;

> defendants with open cases who have been diverted to a specialty court or diversion program and who will be convicted and sentenced if they are not successful in the court or program;

- offenders who have pled or were found guilty of their charges and are sentenced to a term of community supervision, usually probation, that may include participation in specialized programs like drug courts;
- offenders who have completed prison or jail terms but remain on community supervision, usually parole but also probation, for a certain amount of time; or
- offenders released from prison or jail to serve the remainder of their sentences in the community on work release or other programs (this may involve probation or parole supervision).

Community supervision includes two distinct populations with different sets of rights and responsibilities: defendants charged with offenses but who are presumed innocent until proven otherwise, and offenders who have been deemed responsible for an offense by a court of law. Being placed on supervision in the community does not guarantee that no time will be served behind bars: virtually everyone on community supervision is at risk of being detained or incarcerated upon failure to comply with the conditions of supervision.

Despite these different populations in diverse settings and statuses, community corrections can be discussed within a common framework because many supervision and organizational practices, policies, and procedures are the same.

The following sections describe the different populations within community supervision in more detail.

PRETRIAL RELEASE

Once arrested on suspicion of committing a crime, a person has the legal right to be considered by the police or an officer of the court for possible release until the case is disposed.[6] The process by which this determination is made is governed by the policies and practices of several agencies. Law enforcement agencies decide whether to arrest, then whether to cite and release or book into custody; if arrestees are booked, judicial officers typically determine whether to assign the arrestees to pretrial detention or release. Defendants may also be released from custody during the pretrial stage if they are able to post the bail or bond set by a judicial officer or by the local bail schedule.[7]

For most of U.S. history, release pretrial was only possible by posting a bond or bail. However, in 1961, the Vera Institute of Justice was born out of a project that introduced the concept of release on one's own recognizance based on an objective screening for risk of flight. Known as the Manhattan Bail Project, it was an idea that revolutionized the pretrial process.[8] Today, many jurisdictions have pretrial services agencies that provide the court with objective investigative reports and recommendations to aid in detention and release decisions.

An assessment of a defendant's likelihood to return to court or be rearrested if released usually includes factors that have proven to be predictive of such results: (1) residential stability; (2) employment stability or full-time activities (such as full-time education); and (3) community ties (such as the presence of

immediate family or membership in a church).[9]

Most pretrial services programs also provide alternative release options to bail and bond that do not penalize defendants for lacking financial resources. At the court's direction, programs may monitor defendants' whereabouts, remind them of their court dates, and/or supervise their participation in treatment programming.

There are significant negative consequences for people detained during the pretrial period. Studies have repeatedly shown that defendants detained pending trial are treated more harshly than similarly situated defendants who are released pretrial.[10] Detained defendants receive more severe sentences and are offered less attractive plea bargains for no other reason than their pretrial detention. There is no more powerful predictor of post-conviction incarceration than pretrial detention.[11]

Pretrial detention may have other collateral consequences that affect not only the defendant, but also his or her family and community. Defendants may lose jobs, housing, and custody of children or other dependents if they are detained for even a short time.[12] Pretrial release, on the other hand, may be actively beneficial to the final outcome of a case: If a defendant has followed the court's conditions, including completing treatment or receiving services prior to sentencing, the court may be more likely to impose a less restrictive, shorter sentence. Conversely, if the defendant is released and fails while in the community, the judge may be even harsher at sentencing.

PROBATION

The largest group subject to community supervision is the probation population. In 2009, more than 4 million people were on probation (representing 84 percent of the community supervision population).[13] Probation is a court-ordered period of correctional supervision in the community. Frequently, probation is a suspension of an incarcerative sentence, which can be imposed if the offender fails to complete the probation term successfully. In some cases, probation can be part of a combined sentence of incarceration (either in prison or jail) followed by a period of community supervision. A term of probation may be longer than the suspended jail sentence. For example, it is common for an offender to receive a year of probation even when the jail term would have been 90 days to six months.

In 2009, more than 4 million people were on probation, representing 84 percent of the community supervision population.

Probation is a creature of the courts: a judge imposes it as part or all of a sentence and sets the rules and conditions of supervision. Some judges manage their probation cases actively—ordering the probationer to come to court on a regular basis and overseeing adjudication of any violations of probation rules. If a probationer violates the terms of supervision, either by committing a new offense or by failing to follow a probation rule—such as failing to report for an appointment with his or her officer or to a treatment center—he or she can be arrested and held in a local jail to await adjudication of the violation. If a violation is found and revocation is ordered, probationers can be sentenced to

serve all or part of the suspended sentence in custody. Some defense attorneys recommend short jail stays to clients facing less serious charges instead of the intensive supervision and possible longer incarceration term that could result from revocation because of infractions or violations.[14]

SPECIALTY COURTS

Specialty, or problem-solving, courts have become a common component of criminal justice systems.[15] While specialty court participants do not comprise a large segment of the population under community supervision, their numbers are growing. Drug, mental health, homeless, and veterans' courts exist to divert people with special needs from prison. Participants often have many different kinds of problems, legal and otherwise, and specially trained staff and judges "case manage" each individual and his or her varied circumstances.[16] Participants are at high risk of detention if they do not comply with their conditions.[17] They have been offered an "out," and may be penalized if they are not compliant. Some jurisdictions place defendants in specialty courts pre-disposition. In these courts, successful completion of the program results in the eradication of the criminal charge.[18] In other jurisdictions, specialty courts are an alternative to incarceration for people post-disposition, and participants face jail or prison time if they fail to comply with the conditions of supervision.[19]

For post-disposition participants, the length of supervision is usually longer than the original sentence. This may serve to discourage participation. For example, a 30-day jail sentence imposed immediately may be preferred by a drug user over a 12-month supervision period during which he or she is exposed to possible incarceration for rule violations or new offenses. Someone who is sentenced to drug court and fails may ultimately receive a harsher sentence than a similarly situated person who declined a drug court disposition.

PAROLE

Parole, or post-release supervision, is a period of conditional, supervised release in the community following a prison term. Parole release is typically granted by a state-level, executive branch parole board with mandatory supervision provided by a state corrections agency. In recent decades, many states have abolished discretionary parole release.[20] Instead, prisoners are released at the end of their prison terms, and then placed on shorter-term, mandatory post-release supervision. (For purposes of this paper, we refer to both parole and post-release supervision as "parole".) By year end 2009, more than 800,000 individuals were on parole in the U.S.[21]

Similar to probationers, if a parolee violates the terms of parole, either by committing a new offense or by failing to follow a parole rule, he or she can be arrested and held in a local jail to await adjudication of the violation. In most states, the parole board is the adjudication body and decides whether to order a revocation, sending the parolee back to prison to serve all or a portion of the time remaining on his or her original sentence.

Current State of Community Corrections

In the more than two centuries since the first prison opened in Philadelphia, the United States has responded to crime with an ever-increasing reliance on incarceration. Lawmakers, judges, and government officials have turned to cells and bars to achieve an array of desired outcomes. Penitence, punishment, rehabilitation, deterrence, and incapacitation have all been offered as justification for sending more and more people to prison. By 2008, 2.3 million people—or one in 100 adults in the United States—were behind bars.[22]

While mass incarceration has received significant attention in the media, less well known is how many offenders are sent to community supervision. In 2009, seven out of every ten offenders were serving all or part of their sentences in the community, a rate that has remained roughly the same over the last 30 years.[23] This currently amounts to a very large number, however, as during this period, the total number of people involved in the criminal justice system has risen considerably. In 2009, 5.1 million—or one out of every 45 adults in the United States—was under some form of criminal justice supervision in the community.[24]

Under optimal circumstances, community supervision costs would be somewhat higher, caseload size lower, and outcomes would most likely improve.

Costs have risen along with corrections populations. Total state spending on corrections is now estimated at $52 billion a year, the bulk of which is spent on prisons.[25] The table on the next page provides information on 32 states' 2010 prison spending compared with community corrections spending.

While community supervision clearly costs less than incarceration, in many instances, the low cost is a result of large caseloads and a lack of key services. Without funds sufficient to ensure that people are receiving appropriate and individualized supervision, communities may see high failure rates, increased victimization, and delayed rather than avoided costs as understaffed agencies return probationers and parolees to costly jail and prison beds on technical violations of probation or parole conditions or rules.[26] Under optimal circumstances, community supervision costs would be somewhat higher, caseload size lower, and outcomes would most likely improve.

Current outcomes bear out the need for change: success rates on community supervision are not encouraging and most of those who fail are returned to prison (some for a new offense, but most due to a technical revocation).[27] Of the 2.3 million probationers exiting supervision in 2009, only 65 percent completed probation successfully.[28] Sixteen percent were incarcerated for failing the terms of their probation (for a new offense or technical revocation); probation was extended for the remainder, or they were given more conditions and restrictions.[29] Even more fail to complete parole: of the 579,000 parolees exiting supervision in 2009, only 51 percent completed parole successfully.[30] In some states, as many as two out of every three prison admissions are for technical

PRISON AND COMMUNITY CORRECTIONS POPULATIONS AND EXPENDITURES IN FISCAL YEAR 2010

	PRISON		COMMUNITY SUPERVISION		AVERAGE COST	
State	Population	Expenditures	Population	Expenditures	Prison	Community Supervision
Alabama	30,739	$433,745,923	62,200	$45,938,006	$14,111	$739
Arizona [2,6]	38,423	$897,343,500	7,993	$12,989,300	$23,354	$1,625
Arkansas	16,147	$288,888,121	49,900	$28,342,706	$17,891	$568
Colorado [2,6]	22,815	$749,093,130	11,014	$42,417,112	$32,833	$3,851
Connecticut [2,6]	13,308	$607,667,376	2,894	$14,708,644	$45,662	$5,082
Delaware [1]	6,598	$143,800,000	16,900	$24,916,000	$21,794	$1,474
Florida [3,7]	104,306	$2,003,605,196	260,300	$240,909,947	$19,209	$926
Georgia	52,523	$1,113,443,858	482,300	$140,327,782	$21,199	$291
Hawaii [1,2,6]	5,912	$187,613,165	1,850	$3,381,876	$31,734	$1,828
Illinois [2,6]	48,418	$997,859,100	26,009	$50,847,900	$20,609	$1,955
Indiana [2,6]	28,012	$562,247,665	10,872	$9,215,074	$20,072	$848
Kentucky	19,937	$286,381,151	71,400	$37,074,773	$14,364	$519
Louisiana	39,444	$610,880,240	70,000	$60,166,708	$15,487	$860
Maine	1,942	$93,225,747	7,300	$8,805,889	$48,005	$1,206
Maryland	22,275	$733,670,238	101,400	$101,873,275	$32,937	$1,005
Massachusetts [2,6]	10,027	$514,150,199	3,260	$19,006,816	$51,277	$5,830
Michigan	44,113	$1,517,903,300	206,800	$223,889,300	$34,409	$1,083
Missouri	30,614	$533,210,722	76,900	$90,639,112	$17,417	$1,179
Montana	3,716	$74,625,506	11,100	$58,400,264	$20,082	$5,261
Nebraska [2,6]	4,498	$158,190,135	941	$3,538,366	$35,169	$3,760
Ohio	51,712	$1,265,011,710	263,900	$88,700,000	$24,463	$715
Oklahoma	24,514	$441,772,058	28,300	$34,897,398	$18,021	$1,233
Oregon [4]	13,971	$568,476,929	31,347	$107,371,389	$40,690	$3,425
Pennsylvania [7]	51,075	$1,867,230,000	275,200	$96,496,000	$36,559	$351
Rhode Island [1]	3,357	$152,666,473	25,700	$10,843,932	$45,477	$422
South Dakota [2,6]	3,431	$57,967,921	2,843	$3,785,177	$16,895	$1,331
Tennessee	27,451	$622,011,500	72,100	$74,644,600	$22,659	$1,035
Texas	164,652	$2,471,827,691	521,400	$449,682,860	$15,012	$862
Utah	6,795	$130,653,000	14,500	$44,928,500	$19,228	$3,099
Virginia	37,410	$980,674,412	57,900	$73,540,055	$26,214	$1,270
Washington [5,7]	18,212	$638,568,378	18,690	$124,342,088	$35,063	$6,653
West Virginia [2,6]	6,642	$154,936,305	1,796	$3,589,371	$23,327	$1,999
Wisconsin	20,812	$738,334,059	63,900	$188,417,956	$35,476	$2,949

(1) Prison population includes only inmates under state jurisdiction; **(2)** Community correction population includes parole only; **(3)** BJS community correction populations were not comparable to the figures provided to Vera by the state; **(4)** Community correction population figures obtained from the Oregon Department of Correction; **(5)** Community correction population figures include only offenders supervised by the Washington State Department of Correction; **(6)** Community correction expenditures include parole expenditures only; **(7)** Does not reflect all community corrections expenditures.

Source: Ram Subramanian and Rebecca Tublitz. *Realigning Justice Resources: A Review of Population Spending Shifts in Prison and Community Corrections.* New York, NY: Vera Institute of Justice, 2012.

violations of probation and parole.[31]

The reasons for these failures are many. The next section describes some of the current problems facing community supervision agencies.

LARGE CASELOADS

In the 1970s, parole officers supervised an average caseload of 45 parolees.[32] By 2003, parole officers were responsible for approximately 70 parolees, and probation officers for 130 probationers.[33] Not only are caseloads higher today, but the restrictions and conditions placed on supervisees have also become more complex. These can include the imposition of fines and fees, sex offender registration requirements, living restrictions, curfews, and GPS monitoring. Offenders today are also more likely to fall into higher categories of risk for reoffending, with pressing criminogenic needs to be addressed (criminogenic needs are those personal deficits and circumstances known to predict criminal activity if not changed).[34] Thus officers have more offenders on their caseloads, with each offender requiring more attention.[35] Budget constraints also force officers to supervise offenders with fewer resources—from a lack of clerical support to outdated technology—while being asked to enforce new conditions and requirements.

Not only are caseloads higher today, but the restrictions and conditions placed on supervisees have also become more complex.

Supervision agencies cannot deliver expected public safety outcomes if state legislatures pass laws requiring more restrictive requirements for probationers and parolees without providing for adequate agency budgets and capacity.

"ONE-SIZE-FITS-ALL" CONDITIONS

The job of probation and parole officers is further complicated by a number of factors outside their control, such as:

- the long terms to which offenders are sentenced on probation and placed on parole;
- lengthy, standardized sets of conditions for all of those on supervision;
- fines, fees, restitution, and community service obligations that officers must monitor and enforce; and
- mandated treatment for which offenders must pay.

Conditions of release—whether onto pretrial supervision, probation, or parole—are set by judges and parole boards. For many decades, these officials have used long lists of standardized conditions that apply to everyone, regardless of offense or perceived need. Many are obvious and important, such as "Report as directed by your officer" and "Parolees may not possess a firearm." However, others range from the near-impossible to the merely very difficult, such as "Do not associate with known felons" (many offenders have family members who are felons) and "Refrain from possessing or consuming alcoholic beverages."[36] In some jurisdictions, the conditions can number 30 or more. The lists are often in use for years without review.

In addition to their number and difficulty, conditions are imposed that research has demonstrated are more harmful than helpful: for example, requiring the probationer or parolee to submit to drug testing or participate in treatment when there is no indication that substance abuse is a factor in his or her criminality. Even when treatment is deemed necessary, it may only be available from private agencies that charge fees too high for many to afford. These kinds of conditions can frustrate offenders, expose them unnecessarily to more high-risk people and lifestyles, and provide grounds for violation and revocation. In some instances, conditions can even become impediments to finding and retaining employment since mandatory treatment programs, curfews, driving restrictions, and check-ins with parole and probation officers can make it difficult for individuals to schedule work hours.

When viewed in isolation, each of these conditions may seem worthy or reasonable. In the aggregate, however, and when applied universally—even to low-level, low-risk offenders—they become untenable. Non-compliance with any one of them is theoretically grounds for a violation and could result in revocation to jail or prison. When coupled with long probation and parole terms—two, five, ten years—these conditions can become extremely difficult to live by: avoid alcohol, observe a curfew, do not move without permission, do not secure a driver's license, etc. Long supervision terms expose probationers and parolees to the threat of violation and revocation for years. In some cases, a single violation can result in a loss of all earned credit for the time they lived in the community without violations.

SUPERVISION AS LAW ENFORCEMENT

Supervision programs without a focus on treatment do not, in general, produce a reduction in recidivism rates.

For decades, what's often referred to as "tail 'em, nail 'em, and jail 'em" was the prevailing approach to supervision in many jurisdictions. With increasing caseloads and limited resources, this surveillance and enforcement approach may have appeared to be the most prudent way to supervise offenders. Officers without the means or time to meaningfully assess risk and needs, provide case management, purchase or provide services and treatment, or follow-up with families, employers, or program staff would resort to the "safest" avenue available to them: register a violation and recommend revocation at the first sign of troubling behavior. That sign might be anything from a missed appointment, a curfew violation, or a single failed drug test.

Although it may appear safe, exclusive reliance on surveillance has repeatedly been shown to have little impact on recidivism. According to a Washington State Institute of Public Policy analysis of adult corrections programs, supervision programs without a focus on treatment do not, in general, produce a reduction in recidivism rates.[37] Community supervision in some jurisdictions, however, continues to focus heavily on individual probationer accountability rather than on providing officers with the skills, tools, and resources necessary to reduce the risk of recidivism among their supervisees.[38]

THE DEFINITION OF SUCCESS FOR OFFICERS

In a search for fair and objective means of evaluating officer performance, many supervision agencies measure success using what are called contact standards, which direct officers to maintain a certain frequency and type of contact with their supervisees. In these agencies, contact standards are a key benchmark in assessing agency and officer performance, and quick returns of violators are often a measure of vigilance.[39] Reliance on contact standards can result in an emphasis on outputs (such as the number of contacts officers have with their supervisees), at the expense of the outcomes (such as reduced victimization and enhanced public safety) that matter most. Increasing the number of contacts, moreover, has not been shown to produce better outcomes for parolees.[40] This is not surprising since most offender supervision consists of interviews conducted by officers from their desks.[41] It is not uncommon for the average contact to last five to fifteen minutes—with much of it spent by the officer checking on the offender's payment of fines and fees and the completion of community service hours.[42]

LACK OF DIFFERENTIATION IN CASE SUPERVISION

The combination of a long list of standard conditions of release and the use of contact standards in defining success can lead to supervision that is delivered uniformly, regardless of the risk the individual parolee or probationer presents or the issues that might be driving that risk. Decades of research confirm, however, that overly supervising (by number of contacts, over-programming, or imposing unnecessary restrictions) low-risk probationers and parolees is likely to produce worse outcomes than essentially leaving them alone.[43] The opposite is true of high-risk people. Thus, uniform supervision will invariably have a negative impact on recidivism rates for some sector of the supervised population. In addition, if the supervision strategy and case plan are not matched to the individual's assessed risk and needs, the supervision may very well be ineffective.

USE OF INCARCERATION AS A PRIMARY SANCTION

Many people are sent to prison or jail for breaking the rules of probation or parole—a so-called technical violation—even though they did not commit a new offense. In 2009, 24 percent—or 3,205 of South Carolina's prison admissions—were for revocations of probation and parole. Of those, 66 percent, or more than 2,100, were for technical violations, such as failure to show up at the probation office, or for alcohol or drug use.[44] In Louisiana that same year, technical violations of community supervision accounted for 24 percent of all prison admissions.[45] Correspondingly, in fiscal year 2010 Kentucky noted that the number of its parolees who were sent back to prison and who did not have new felony convictions nearly doubled as a percentage of prison admissions. Such parole violations accounted for 10.2 percent of total prison admissions in fiscal year 1998, yet rose to 19.5 percent of all admissions in fiscal year 2010.[46]

In many cases, a return to jail or prison is unnecessary to protect public safety and may make things worse as serving time in prison has been shown to increase the risk of future offending, not to decrease it.

In many cases, a return to jail or prison is unnecessary to protect public safety and may make things worse as serving time in prison has been shown to increase the risk of future offending, not to decrease it.[47]

Too often, probationers and parolees are revoked because previous lesser infractions were met with little or no response—which encouraged the supervisee to think that the rules do not matter and produced an officer exasperated by repeated rule breaking. Such exasperation can provoke responses that are out of proportion to the immediate violation. Officer responses to rules violations that are consistent and appropriate are important to reinforcing desired behavior and discouraging negative behavior.

Incarcerating technical violators is costly, both in time and money. Supervising officers have to spend time writing reports and attending hearings; the court or parole board must make time in crowded calendars. In terms of expense, a 2003 report in California—where parole violators accounted for two-thirds of all prison admissions—revealed that the state had paid almost $900 million to re-incarcerate parole violators. Some estimate that by reducing the return-to-custody rate by 20 percent for non-serious, non-violent parole violators, corrections costs in California could have been cut by $71 million.[48]

FAILURE TO ACKNOWLEDGE CYCLES OF ADDICTION AND RECOVERY

Judges and parole boards frequently impose supervision conditions on long-time alcohol or drug abusers that require them to remain abstinent. This requirement ignores the reality that recovery is a process that usually involves relapsing into alcohol or drugs use.[49] A more realistic condition would be to enforce treatment completion and to monitor work toward abstinence. Similarly, alcohol and drug testing has become a commonly imposed condition that might have little to do with an offender's pattern of offending, but nonetheless requires officer time to conduct, monitor, and respond to.[50]

Emerging Best Practices

Part of the U.S.'s long-standing reliance on incarceration stems from the belief that "nothing works" and that the most that the justice system can do to promote public safety is to keep known perpetrators locked up for as long as possible. Today, that belief is widely challenged as a growing body of research demonstrates the positive impact that a variety of community-based interventions can have on individual behavior.

Although policymakers traditionally paid little attention and provided limited resources to community supervision agencies, some practitioners in the field have been engaged in efforts to bring the past three decades of research to bear on their agencies. Clearly, business as usual is not working, and recent

policy changes that shift the burden from institutional to community corrections without addressing resources and practices are raising alarms among agency officials.

When intractably high offender failure rates are coupled with concerns about the size of prison populations and the current economic crisis, the pressure on corrections agencies to make more effective use of shrinking resources is heightened.[51] A number of state legislatures have gone so far as to pass bills requiring state parole, probation, and other community corrections agencies to revamp their supervision practices to use those that research has shown to be effective.

Implementing research-based practices requires more than simply adopting new techniques and programs: agencies must reshape their mission, restructure supervision, and redefine the role of supervision officers.

REDEFINITION OF AGENCY GOALS AND OFFICERS' ROLES

Implementing research-based practices requires more than simply adopting new techniques and programs: agencies must reshape their mission, restructure supervision, and redefine the role of supervision officers. Because so many agencies were previously encouraged to take an enforcement and surveillance approach to supervision, shifting to a mission of producing public safety through the success of supervisees (rather than through punishing their failures) is a significant undertaking. Everything from job descriptions, officer training, promotion criteria, and reward structures must be reviewed and adapted. In many ways, the transformation being asked of these agencies mirrors what agencies are encouraging their parolees and probationers to undertake: new values, new ways of thinking, new skills.

A significant part of this transformation involves developing in officers the skills to assess their supervisees accurately, interact with them effectively, motivate them to change, and understand the services and interventions that will support the desired change. For many agencies facing budget restraints, investing in extensive officer training is difficult to justify. However, without it, other investments—whether in assessment tools or service contracts—will fall short of their potential impact.

A BEHAVIORAL-MANAGEMENT APPROACH TO SUPERVISION

As part of supervision restructuring, some agencies are implementing a behavioral-management approach to supervision that prioritizes assisting offenders in leading successful, crime-free lives in the community.[52] The role of a supervision officer in a behavioral-management model combines enforcement responsibilities with a duty to instruct and model pro-social behavior.

By reframing the routine interactions between community corrections officers and the people they supervise as an *intervention*, the supervisee becomes an active participant in developing his or her supervision and treatment plan. This approach also requires officers to establish goal-directed contacts: each interaction—whether interview, collateral contact (contact with key people in an offender's life, such as an employer, neighbor, or family member), phone

call, etc.—should have a clear purpose in securing behavior change. The supervisee's success in the community becomes the definition and measure of the officer's success.

RISK AND NEEDS ASSESSMENT TOOLS

The foundation of good correctional practice is the administration of a validated risk or risk and needs assessment tool to defendants and offenders. Risk assessment instruments measure the probability that a person will reoffend if or when released into the community. Needs assessments identify a person's criminogenic needs, such as education, mental health counseling, or positive social peers. Today's assessment tools measure static (those things that can't be changed: age, criminal history, etc.) and dynamic (those that can: drug addiction, anti-social peers, etc.) risk factors, criminogenic needs, and strengths or protective factors present in an individual's behavior, life, or history. These provide the basis for individualized case plans to guide supervision, programming, and interventions. There are a variety of assessment tools available for different purposes. Some are proprietary while others are available at no cost. Whatever tool is used in whatever context, states and counties must validate them using data from their own populations.

A recent survey conducted by Vera found that a majority of community supervision agencies and releasing authorities routinely utilize assessment tools.

Assessment tools are used to some degree in all states and in many counties at a number of decision points and in a variety of settings. Judges and releasing authorities use information from assessment tools to guide decisions regarding pretrial release or detention, and release on parole; corrections agencies use them for placement within correctional facilities, assignment to supervision level or to specialized caseloads, and for recommendations regarding conditions of release. Since the best tools evaluate the individual's dynamic or changeable risk factors and needs, they should be re-administered routinely to determine whether current assignments and plans are still appropriate.

A recent survey conducted by Vera found that a majority of community supervision agencies and releasing authorities routinely utilize assessment tools. Responses from 72 agencies across 41 states indicated that 82 percent of respondents regularly assessed both risk and need.[53] While these self-reported numbers may be inflated, the responses do indicate agency awareness of the importance of assessments.

SUPERVISION BASED ON LEVEL OF RISK

Research over many decades demonstrates that supervision and intervention resources are used to best effect on those who pose the highest risk to public safety. In terms of promoting law-abiding and pro-social behavior, the greatest return on corrections dollars can be realized by supervising moderate-to-high-risk offenders more intensively—in terms of the number and frequency of contacts and the range and intensity (or dosage) of services and interventions.[54]

Researchers and practitioners note that increased and more intensive contacts and programming benefit this population because they intervene in

established patterns of thought and socialization, and serve to structure supervisees' time in more conventional ways, leaving less time for aimless "hanging out." The moderate-to-high-risk group is also operating with the greatest number of deficits (such as addiction, anti-social attitudes, low educational achievement, etc.) so addressing even some of these is likely to improve behavior and outcomes.

Conversely, as noted previously, research has shown that assigning low-risk offenders to intensive supervision and programming can be counterproductive. Intensive interventions risk disrupting already established pro-social behaviors, activities, or relationships (such as jobs, school, parenting, or religious observances), as well as exposing low-risk offenders to anti-social attitudes and subcultures in group programs. In doing so, agencies can in fact increase these supervisees' risk of offending.[55]

These research findings often run counter to the beliefs of many judges, paroling authorities, and other decision makers who consider treatment and programming resources wasted on high-risk offenders and who tend to overintervene with low-risk offenders. Their beliefs can make it difficult to implement practices supported by the evidence.

Throughout this report, passages marked with ★ spotlight best practices or recent policy changes in selected states.

★ **DELAWARE** A state with a unified prison and jail system, Delaware is in the process of adopting a pretrial risk assessment instrument to inform detention and release decisions with the intention of holding fewer low-risk defendants and freeing resources for high-risk populations. Delaware is using this and other changes to be able to spend its limited public safety dollars on programming that addresses offenders' risks and needs more comprehensively. Furthermore, through earned compliance credits Delaware has created an incentive for probationers to comply with supervision conditions in exchange for a reduction in their probation terms.[56]

★ **GEORGIA** The Georgia Department of Corrections is utilizing technology to monitor its low-risk offenders. Low-risk probationers are required to call into an automated system at a probation reporting contact center (PRCC). Should a probationer provide nonstandard responses to the system's questions, the call is directed to his or her probation officer. This provides an incentive to probationers to comply with the rules of their probation in order to maintain or gain the liberties that PRCC offers. The system has allowed Georgia to allocate more resources and time to its high-risk probationers, thereby increasing public safety and improving supervision quality.[57]

SUPERVISION TIED TO NEEDS

Impacting criminal behavior requires a nuanced understanding of a supervisee's educational, social, and cognitive needs. For example, research conducted by Vera on a large cohort of parolees found that unless officers understand the

reasons why a parolee cannot maintain stable housing or keep a job, they cannot help change the situation. Depending on the case, impediments to success can be anything from characteristics of the supervisee—such as an inability to get along with or take simple directions from others—to a lack of skills or rent money.[58]

As explained above, the assessment instruments in use today measure a person's criminogenic needs as well as his or her strengths. This information forms the basis of the individualized case management plan that prioritizes the supervisee's treatment, education, and service needs and identifies the most effective ways to address these. Incorporating both strengths and needs in the case plan ensures the officer does not order an intervention that will interfere with or disrupt protective factors, while also guiding the officer in how to recognize and reinforce positive behavior during the supervision process.

ENHANCED RESOURCES FOR THE RISKIEST CASES

Too many supervision agencies waste valuable resources—staff time and purchased services—on low-risk offenders who actually may be harmed by excessive supervision and programming. By redirecting existing resources agencies can provide more intensive supervision, treatment, and services to medium and high-risk parolees and probationers.

However, redirected resources alone are not always sufficient to substantially improve public safety. Securing this requires more officers, lower caseloads, better training, and funds to purchase services and treatment for medium and high-risk offenders. Therefore, states and counties may need to invest additional resources upfront to make communities safer.

GRADUATED RESPONSES AND INCENTIVES

Revocation to jail or prison is a severe, expensive, and mostly ineffective sanction for some supervision violations. Yet officers often express the fear that, if they do not revoke for lower-level violations, a supervisee may commit a more serious offense later on for which the officer and his or her agency will be held liable. Many jurisdictions have addressed this concern by formally adopting policies that support a system of graduated responses for rules violations and offer individual officers legal protection. These policies are grounded in a growing body of research showing the importance of responding to *every* infraction; the key is to respond appropriately and proportionately. From a missed appointment to a failed drug test, there are many behaviors that can be safely met with prompt, defined sanctions that are proportional to the violation and address the reasons the violation occurred.[59] Providing a continuum of responses that includes both programming interventions and sanctions (such as an official reprimand from a senior supervising officer, more frequent reporting, a new curfew, or time-limited travel restrictions) gives officers the tools to respond to every violation while allowing them to continue interacting and working with their supervisees through difficult periods.

Some states supplement these community-based responses with secure residential options, known as "half-way back" programs. Recent research casts doubt on the usefulness and cost effectiveness of these programs for technical violations unless there is a demonstrated need for intensive, residential treatment and parolees are placed in them immediately following a violation.[60] A less disruptive and expensive alternative is day reporting, which requires supervisee to report to a center daily, weekly, or otherwise, depending on his or her level of risk and needs.[61] These centers structure free time by offering rehabilitative programming, such as substance abuse treatment, educational and vocational skills trainings, together with surveillance and accountability activities (such as drug testing). Research demonstrates that day treatment centers can reduce recidivism and keep communities safer.[62]

In addition to sanctions, an effective system of graduated responses should also incorporate incentives and rewards. Research indicates that a ratio of at least four positive to each negative verbal response (4:1) is most effective for reinforcing behavior change.[63] Corrections agencies can use positive reinforcement to encourage offenders to accomplish pro-social goals and other positive behavior change. In addition to verbal praise, these can include a letter of commendation or certificate of achievement from a supervising agent or office director, a small gift card or transportation allowance, or similar inexpensive item.

★ **OREGON** The Oregon Department of Corrections has used a graduated response system since 1993.[64] It allows officers to promptly apply graduated sanctions for certain violations without having to go through a court hearing process. To make the system less subjective, the department utilizes a grid to determine appropriate sanctions for various types of behavior. In 2002, the department conducted a study of the effectiveness of this system and found that: (1) individuals sanctioned with community service were the least likely to recidivate in the future; (2) increased jail time was associated with higher rates of recidivism; and (3) treatment and rehabilitation interventions were more successful than surveillance or enforcement sanctions.[65]

★ **KANSAS** Kansas has developed a Behavior Adjustment Response Guide (BRAG) to help officers make informed decisions regarding sanctions and rewards.[66] It works in conjunction with a comprehensive case plan that includes goals and action steps that target particular risks and needs. Negative responses may include a more restrictive curfew, GPS monitoring, or day reporting. Positive responses are included in the guide and might include a letter of recognition, a certificate of progress for remaining substance-free, or small gift or transportation card to ensure that officers reward compliant behavior and achievements.[67]

Current Practices That Need More Research

If research-based practices that improve lives and enhance public safety are to advance and help change the national reliance on incarceration, then researchers, policymakers, and practitioners must continue to test their hypotheses and evaluate their programs and interventions. Encouraged by practices that appear to produce results in other states, some agencies are implementing (and some states are mandating) practices that have not yet been validated by research. Many of these practices are ripe for further exploration and research, as the following seven examples demonstrate.

USE OF TECHNOLOGY

The rapidly growing number of people placed each year on probation, parole, and pretrial supervision pushes the caseloads of many community supervision agencies far beyond their capacity. In an effort to cope with increasing caseloads and shrinking resources, agencies are seeking innovative solutions that use technology while maintaining effective and safe supervision.

Kiosk reporting. Some jurisdictions have implemented automated kiosk reporting systems for low-risk offenders as a strategy to shorten case processing time and to reduce the expense of data collection.[68] Kiosks are automated machines through which individuals can report to supervising officers. Entering a password or other identifier, offenders can update their information, receive messages from their supervising officers, be assigned to drug testing, or ask questions about the conditions of their supervision. Designed for low-risk offenders, the kiosk system allows flexibility in reporting times to offenders who may be in school or working. This can prevent interruptions in what may be activities that support successful reentry. The agency saves staff time and costs by requiring the offender to input information directly into the machine, which uploads it into agency data systems. In-person meetings can also be scheduled when necessary. Very little is known, however, about the extent that kiosk systems are used across the country or about the safety and cost effectiveness of these systems compared to traditional supervision. Further research is needed on the effectiveness of kiosk supervision and other automated systems and the circumstances under which these should be used in community corrections.

Electronic monitoring. The number of offenders monitored electronically has grown significantly since the introduction of such technology in the 1980s. Electronic monitoring (EM) is now used in a variety of community supervision settings, including parole, probation, and pretrial supervision. EM was origi-

nally introduced to monitor offender compliance with curfews, but the development of EM with global positioning systems (GPS) added the ability to track, with considerable precision, the movements of supervisees. EM with GPS has been used most frequently with those convicted of sexual offenses.

The potential for cost-savings in using EM as an alternative to incarceration suggests that its use is likely to continue to grow.[69] Despite its proliferation, the field still lacks a solid evidence base from which to learn about EM best practices.[70] Most evaluations conducted to date have relied on small samples and lacked a satisfactory control group.[71] Given the variety of correctional settings in which EM is used and the range of offenders it is used with, much research is still needed to determine the fiscal and social impact of EM and to identify the practices that lead to the best outcomes.

Despite the impact on offenders and their families and the significant costs incurred by states in meeting notification requirements, research into the efficacy of offender registries has been slow to emerge and contradictory in its findings.

OFFENDER REGISTRIES AND COMMUNITY NOTIFICATION

Since 1996, community notification regarding the presence of registered sex offenders has been mandatory in all states. Despite the impact on offenders and their families and the significant costs incurred by states in meeting notification requirements, research into the efficacy of offender registries has been slow to emerge and contradictory in its findings. While some studies have found a reduction in the number of arrests made for first-time sexual offenses following implementation of public notification laws, other studies have not found any impact.[72]

Even without reliable evidence, however, some states have extended their use of public registries beyond sex offenders. At least eight states require public registration of violent felony offenders, and other jurisdictions are considering registries in response to crimes such as murder and domestic violence. Since little is known about whether and under which circumstances public registries add to public safety, further research is needed to inform ongoing debates.

COMMUNITY SUPERVISION PROGRAMS AND VIOLATION RESPONSE TECHNIQUES

Although limited research suggests that programs designed to increase supervision and treatment services for parolees and probationers who violate their supervision conditions can effectively reduce recidivism, increase access to treatment, and limit reliance on incarceration as a sanction, these programs would benefit from full-scale evaluations of their effectiveness.[73]

Day reporting centers. Some states have demonstrated that day treatment centers are effective at reducing risk level and future recidivism.[74] Day centers are, however, used for a variety of purposes and populations. As jurisdictions increase their use of day treatment centers, they will need to evaluate their individual programs to demonstrate their effectiveness (with which populations and with what kind of programming) in order to sustain political and agency support for such efforts.

Graduated responses. Graduated responses provide swift and certain consequences for rules violations without having to resort to incarceration. To the extent that they incorporate interventions and programming, they may have an enhanced, positive effect on recidivism. However, there is little research on the effects of graduated responses on recidivism (compared to their impact on revocations to prison).[75] Evaluating the effectiveness of the range of sanctions can inform agencies which sanctions and interventions are effective for specific violations and populations, based on their risk level and treatment needs.

Reentry courts. Although several states and the federal government have established reentry courts as another approach to supervision and service coordination for parolees, research into their impact and effectiveness has been limited. Reentry courts apply the promising features of drug courts, such as graduated sanctions and positive reinforcements, to the management of offenders reentering the community after prison. A small number of studies suggest that these courts have the potential to increase rates of successful community reintegration but the evidence is inconsistent.[76] Further research is needed to establish the extent to which reentry courts can improve outcomes for parolees and to identify the specific populations and program elements that are associated with these improved outcomes. More information is also needed on the impact of using the courts for this purpose on their day-to-day operations and responsibilities.

HOPE courts. By using short (no longer than a few days), swift, and certain jail sanctions in response to the misconduct of medium-to-high-risk supervisees, Hawaii's Opportunity Probation with Enforcement (HOPE) program decreased technical violations and re-arrest rates.[77] Many jurisdictions have since followed suit—with Arkansas, Kentucky, Maryland, and Vermont all passing legislation with HOPE provisions in 2011 alone. Despite wide adoption, no research has been conducted on the effectiveness of the program in jurisdictions outside Hawaii.

COMBINATIONS OF PROGRAM INTERVENTIONS

Many in the research community believe that successful evidence-based interventions would have a much greater impact on recidivism if they were used together, rather than in isolation. For example, a recent study of transitional jobs programs, conducted for the Joyce Foundation, reviewed programs provided to those recently released from jail or prison that combined temporary work with hard and soft employment skills training. The authors found limited utility in this approach one year after the individuals' release.[78] However, in reviewing the study's results, a group of researchers and experienced practitioners meeting in Washington speculated on the likely impact of a similar program if it included additional programming responsive to participants' other, non-employment needs.[79] This is difficult research as it is a challenge to tease out the

precise combination of interventions and programs that will be most effective with particular populations.

PRETRIAL SUPERVISION

Pretrial release programs that use validated risk assessments to target supervision can reduce incarceration and allow defendants to maintain stability in their lives without endangering the public. Given their status as defendants and the presumption of innocence, there is a particular need to ensure that conditions of release place the minimum burden possible on supervisees. In addition, many jurisdictions also refer pretrial supervisees to treatment or other interventions (drug treatment, counseling, or mental health services, for example) aimed at reducing their levels of risk and need. Because pretrial programming varies considerably between counties and states, more research is needed into the impact of different pretrial supervision practices.[80] Continued research is also needed to identify the most effective conditions, combinations of conditions, and responses to misconduct to ensure public safety and decrease failure-to-appear rates. Such research would strengthen and expand the current evidence base and would be of great value to future policymaking.[81]

ENHANCING SOCIAL SUPPORT

Research suggests that family ties, social networks, and social support deters criminal behavior. For many, social networks are often more effective in meeting employment and accommodation needs than are social-welfare organizations.[82]

Social support. Many programs designed to lessen the risk of offending focus on the development of human capital—individual attitudes, skills, and education—to the almost total exclusion of social capital—the value inherent in and between social networks.[83] Finding employment, for example, is not only aided by acquiring new skills (human capital), but by the cultivation of social networks that provide access to job opportunities (social capital), many of which are not publicly advertised but found through word-of-mouth. Social isolation can therefore greatly inhibit successful job-seeking.[84]

Research suggests that providing ex-prisoners with opportunities to help others can also lessen the risk of offending.[85] Offender mentorships may therefore be an important addition to traditional community supervision programming.[86]

Further research is needed to determine the impact of programs that attempt to support social reintegration and to identify ways in which officers can promote social support without jeopardizing public safety.

Family support. Offenders often find themselves incarcerated many miles from their homes. Maintaining meaningful contact with their families can be financially and logistically challenging, to the point that contact may be lost

entirely. In the community, public housing policy and conditions of supervision can further limit supervisees' ability to participate actively in family life (for example, restrictions on associating with known felons when family members are felons). However, research demonstrates that family support can be a highly influential factor in the success of ex-prisoners.[87] For example, securing employment and abstaining from drugs are both related to intimate partner and family relationships.[88]

Efforts to promote family ties need to start before release. Family visitations in prison can both delay and reduce recidivism upon reentry, but encouraging such visits requires training corrections staff to understand the importance of family contact and a review of policies and practices that may help or hinder them.[89] More research is needed into the impact of family-focused interventions and training in order to demonstrate their value and identify important program components and best practices. Various policies can also prevent family reunification in the community. For example, public housing authorities can exclude criminal-justice involved people from their properties, preventing both adults and juveniles from living with their families. Research is needed to understand how the potentially negative consequences of these policies might best be mitigated and to support possible changes to the policies.

OFFICER WORKING STYLES AND PRACTICES

Improving community supervision outcomes requires a shift in the way officers approach their work. Focusing solely on the enforcement of rules and imposing sanctions without attempting to develop motivation, engagement, or a sense of responsibility in supervisees can decrease the effectiveness of officers' supervision and threaten the success of community interventions, despite other efforts to implement practices proven effective through research. When departments emphasize skill-building among their officers and place importance on their relationships with those they supervise, officers are likely to have greater job satisfaction and stay in their positions longer.

Officer skills. More research is needed into the skills, competencies, and interactional styles of officers that best promote offender success and the efficacy of training programs that aim to support these. While there is some research available that seeks to address these questions, much remains unknown. For example, the use of pro-social modeling by officers correlates with offenders' compliance with supervision requirements and desistance from crime.[90] The use of motivational interviewing techniques has some impact on future offending, offender retention and engagement in treatment programs, and motivation to change.[91] Research has also shown that officers are responsive to training and support that assists them in applying core correctional practices during face-to-face interactions with supervisees.[92] But further research is needed to identify supervision styles that work best with different types of offenders; there is qualitative evidence to suggest, for example, that female

offenders take greater benefit than men from a relationship-oriented style of supervision.[93] Further research into the impact of officer qualities and interactional styles could inform the development of more effective training programs for officers and encourage corrections agencies to view officer development as a worthwhile investment of their often limited funds.

Officer-supervisee working relationships. In recent years, policymakers and researchers have recognized the importance of the officer-supervisee relationship to successful community reintegration and corrections outcomes.[94] Research suggests that strong, positive working relationships that are based on mutual respect, openness, honesty, and warmth, among other qualities, can increase compliance and engagement with supervision and decrease recidivism.[95] Successful working relationships should be well balanced between the dual roles of rehabilitative care and rule enforcement, as officers who develop a 'firm, fair, and caring' relationship with supervisees see a decrease in recidivism.[96] Positive and consistent working relationships are related to improved outcomes in correctional treatment programs, and are also thought to improve officers' ability to gather information and monitor their supervisees.[97] More research is needed to better understand what constitutes good working relationships, how these can be fostered, and which policies or practices threaten or encourage their development. Without giving serious consideration to this aspect of community supervision, other evidence-based interventions may well fail to live up to their full potential.[98]

Recent Policy Changes in Community Corrections

As state revenues have foundered, and recognition of the impact of probation and parole failures on jail and prison populations and budgets has grown, states have looked for ways to encourage and sustain the development of effective community-based sanctions that keep offenders safely in the community. Following are some of the multiple strategies states are pursuing to achieve this end, along with some state models.

MANDATORY USE OF EVIDENCE-BASED PRACTICES

With wider dissemination of research findings on how to impact criminal behavior, legislatures are passing bills that require corrections agencies to direct funds to programs that employ evidence-based practices. In some states, such as Oregon, the legislation specifies that a percentage of allocated funds must be used for evidence-based programming.

ARKANSAS In 2011, Arkansas enacted the Public Safety Improvement Act, which requires the Department of Community Corrections to implement evidence-based practices across the agency. The law mandates the agency to use specific practices. For example, probation and parole officers must develop individualized case plans for everyone designated moderate- or high-risk by an assessment tool that targets interventions for specific criminal risk factors, such as antisocial thinking, low levels of education or employment, and substance abuse.[99]

KENTUCKY Part of a broad legislative package recently passed in Kentucky explicitly requires the Department of Corrections to use risk assessment tools to evaluate all probationers and parolees and to place low-risk offenders on administrative caseload supervision—a program designed to monitor those designated low-risk only to ensure they have not engaged in criminal activity and are fulfilling any court-ordered financial obligations ordered by the court. The new laws also permit people at a higher level of supervision to eventually move onto the administrative caseload by their consistent compliance with conditions.[100]

WASHINGTON The state's Offender Accountability Act requires classifying offenders according to their risk for future offending and allows the Department of Corrections to deploy more staff and resources to the supervision of offenders identified higher risk. It also encourages the department to develop partnerships with local law enforcement and social services to provide appropriate services in the community.[101]

AUTHORIZATION FOR USE OF ADMINISTRATIVE RESPONSES TO PROBATION AND PAROLE VIOLATIONS

Many states are looking for ways to stop the flow of technical violators into their prisons. Revocation to prison is not effective at preventing future crime and is very expensive. However, for many of the reasons discussed earlier, too many officers recommend revocation for technical violations. Therefore, some states have legislated alternative sanctions for rules violations.

LOUISIANA In 2011, the Louisiana Sentencing Commission, after studying the impact of revocations on the state's prison population, recommended administrative sanctions, which the legislature authorized.[102]

DELAWARE While Delaware had already implemented many evidence-based practices in its responses to violations of supervision conditions, it recently took additional steps to enhance its practice, including assuring that those who violate supervision terms receive sanctions that are proportional to the violation. These changes will reduce the state's reliance on incarceration and administrative jail time and thus save taxpayer dollars without threat to public safety.[103]

LIMITATIONS ON PROBATION AND PAROLE TERMS

As noted earlier, long terms on community supervision can expose even compliant parolees and probationers to possible revocation. Five years, for example, of needing permission to move, to travel, to get a driver's license, or of having to report regularly and observe a curfew might tempt anyone to break the rules. Legislators in some states have moved to limit probation and parole terms to avoid this risk when it is no longer needed.

EARNED DISCHARGE

Similar to the good time credits inmates can earn to shorten their periods of incarceration, earned discharge policies give those on supervision a way to shorten their terms of supervision by meeting the goals and conditions of supervision. These policies differ from laws that permit officers to petition judges or parole boards to reduce the supervision time of individual parolees or probationers. Rather they are automatic, eliminating the political pressures that can influence the judge, parole agency, and supervising agent.

For those on community supervision, earned discharge is the ultimate incentive for compliance.[104] For community corrections agencies, moving lower-risk probationers and parolees to less-intensive levels of supervision, or off supervision altogether, allows them to allocate resources more efficiently to less compliant, moderate-to-high-risk offenders who present a greater threat to public safety.

★ **ARIZONA** The Safe Communities Act of 2008 granted the court the authority to adjust a probationer's term of supervision based on earned time credit. Specifically, a probation sentence can be reduced by 20 days for every month the probationer exhibits progression toward the goals of his or her treatment plan, has no new arrests, and is current on payments of restitution and fines.[105] Data released in 2010 indicate that, since the policy's implementation, there has been a significant decline in the number of probationers convicted of new crimes, as well as a 29 percent decline in the overall number of probation revocations.[106]

★ **ARKANSAS** In 2011, Arkansas passed the Public Safety Improvement Act, which allows probationers and parolees to earn credits equal to 30 days off their sentences for every month they comply with court ordered conditions and a set of pre-determined criteria established by the Department of Community Correction, in consultation with judges, prosecutors, and defense counsel.[107]

★ **DELAWARE** Delaware's Senate Bill 226, signed into law in 2012, created "earned completion credits" for those under community supervision. The law permits the Delaware Department of Correction to award supervisees up to 30 days of credit for each 30 days of compliance with conditions of supervision.[108]

PERFORMANCE INCENTIVE FUNDING

Performance incentive funding programs reward local supervision agencies with some of the savings that states accrue when community supervision agencies successfully reduce the number of offenders revoked to prison for violating a rule or a condition of supervision. The funding can then be used to maintain or expand an agencies' use of evidence-based practices.

States, including California, Illinois, and Kansas, have implemented performance incentive funding in their adult justice systems. While each state has a slightly different incentive structure, they have in common the goal of reducing the number of people on parole or probation who are sent to prison on a revocation. California ties the receipt and amount of funds to estimated savings to the state, while Kansas awards grants based on targeted reduction goals. More recently, Arkansas, Kentucky, Pennsylvania, South Carolina, and Texas all created performance incentive funding programs.

★ **ILLINOIS** In the Crime Reduction Act of 2009, Illinois created a financial incentive for the reduction of prison commitments from local jurisdictions called Adult Redeploy Illinois. The Adult Redeploy Illinois Oversight Board is tasked with overseeing the development or expansion of community-based sanctions and creating a formula to determine how much each local jurisdiction will receive in reallocation funds. In return for the funds, each county must sign a pledge with the oversight board to reduce its commitments by 25 percent.[109]

★ **CALIFORNIA** The California Community Corrections Performance Incentives Act of 2009 requires the use of evidence-based practices in probation supervision in order to qualify for incentive funding.[110]

Moving Forward: Recommendations to the Field

Community-based supervision has always had the potential to support individual change, help make communities safer, and reduce public costs; but, for all the reasons already noted—the pressure of falling revenues, the more than 700 percent increase in the prison population, and the high post-release failure rates—governors and legislators are just now beginning to pay attention. Community corrections can only be effective, however, when the necessary resources and capacity are available to incorporate research-proven principles of offender and systems change. The challenge to the full realization of all that potential is securing those resources and capacity.

Given the enormous pressure that states have faced from shrinking budget

dollars and rising costs, many states have focused primarily on legislative and policy changes aimed at producing a swift reduction in the prison population, such as increasing earned good-time credit, reducing the time to parole eligibility, making a larger group of offenses—particularly drug offenses—eligible for community-based sentences, and rolling back release dates with a requirement of post-release supervision. These reforms not only expand the number of people community corrections agencies must supervise but also increase the levels of risk and needs in the population to be supervised.

In addition, counties are facing their own budget woes. To save on jail beds, many local jurisdictions are revamping their pretrial policies and speeding up case processing to move cases through the courts more quickly.[111] These changes mean greater numbers of individuals are placed on pretrial supervision in the community or on probation more quickly.

While these legislative and policy changes are good and important, there is a risk that they will not be implemented as intended or will prove ineffective without the necessary oversight and resources.

Some states and counties have embarked on this process under the rubric of "justice reinvestment"— the promise of reallocation of institutional cost-savings to community-based treatment, education, and other services aimed at crime prevention or recidivism reduction. Beyond reallocation of existing corrections' dollars, new investment is also needed. In these times, when every extra dollar is typically needed to fill a hole in some part of the budget, it has been hard to find examples of truly *new* spending on these items.

WHAT IT TAKES

The opportunity to steer the country away from its reliance on incarceration and towards the careful and effective use of community corrections exists today but may very well be missed without a full appreciation of what it is going to take to create success. The investment of budget resources is essential, but so are a number of other ingredients.

Collaboration with key stakeholders. Securing the outcomes sought by policymakers—in public safety, dollars saved, communities improved—is more likely if key stakeholders are part of the process. Corrections agencies cannot affect desired outcomes on their own; police, judges, prosecutors, paroling authorities, and others play an important role as well. Legislators and executive branch policymakers can provide needed outreach to these constituencies to build their understanding of why change is needed and to encourage their cooperation. They can also convene forums through which corrections agencies and other stakeholders can discuss the progress and impact of change.

Corrections agencies cannot affect desired outcomes on their own; police, judges, prosecutors, paroling authorities, and others play an important role as well.

Realistic expectations. Elected officials must not expect anticipated outcomes, such as a reduction in prison population, to happen overnight. For some agencies, the kinds of changes needed to achieve the outcomes envisioned may take

a long time. Changes in hiring, training, case classifications, caseload assignments, staff reward structures, and so on all require extended, focused effort on the part of agency leadership.

Skilled, bold leaders. Effective community supervision requires agency leaders who have the support of policymakers to produce systemic change. Leaders need vision, freedom to create an executive team of their own choosing, support from above, and the ability to withstand the pressure to maintain the status quo. Governors and county executives also need help: corrections should warrant the same kind of professional recruiting guidance that most executives would look for in hiring an education or health official. Once hired, these agency heads need ongoing support to implement fully mission, policy, and practice changes throughout their agencies.

Culture change. Changing supervision practices within agencies includes changing the ethos of the entire operation: mission, vision, values—everything from policies to job descriptions and staff promotion criteria. This process is long and arduous: not only is there predictable resistance to changes to the way things have always been done, but recalibrating an agency toward the success of probationers and parolees (as opposed to just avoiding or catching failure) can be a fundamental challenge to the way an agency's employees see themselves, their work, and their purpose. There are many proven ways to make these changes successfully, from using vertical implementation task groups drawn from different levels of staff and different divisions within an agency to providing rewards and incentives to employees, but the process must be carefully thought out.

An additional challenge may be frequent changes in leadership and, hence, approach. Staff may resist change in anticipation that this new person and his or her team will not be in place for very long. This attitude makes it all the more imperative that hiring and promotion criteria be overhauled quickly, and policy changes be developed with input from line staff and institutionalized as rapidly as possible. Support from outside experts is usually helpful in identifying and managing the many different aspects of the change process—from coaching leaders and framing messages to staff to creating new hiring and promotion criteria and developing policies that reflect new goals.

Training for staff. Training that provides staff with the knowledge and skills they need to meet new job expectations is critical: research findings, motivational interviewing, communication skills, and risk and needs assessments are just some of the needed training areas. Training, however, is resource intensive and takes staff away from their regular duties. Agency leaders must make its value clear across the agency, particularly to its mid-level managers.

Available programming that meets evidence-based standards. Evidence-based programming is key to producing positive public safety outcomes and simply may not be available in certain jurisdictions. Especially in rural and smaller metropolitan areas, choices in providers may be extremely limited. Agencies must have the resources to assess providers and to seek either training for their own staff or to create incentives for providers to acquire needed skills and assets to fill program gaps.

Conclusion

At a moment when state and local governments are pursuing sentencing and policy changes that would have been unthinkable five years ago, it is essential that far greater attention be paid to and resources invested in community corrections and supervision. The feeling of accomplishment in many state capitols and county seats as legislative and policy changes are enacted is premature unless and until these changes are implemented as envisioned. Only when community supervision agencies have the assistance they need to deliver on anticipated outcomes will the potential for community corrections to bring about personal transformation and improved community safety be realized for individuals, their families, and their communities.

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For more information about Vera's Center on Sentencing and Corrections, contact the center's director, Peggy McGarry, at pmcgarry@vera.org.

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Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Tel: (212) 334-1300
Fax: (212) 941-9407

Washington DC Office
1100 First St. NE, Suite 950
Washington, DC 20002
Tel: (202) 465-8900
Fax: (202) 408-1972

New Orleans Office
546 Carondelet St.
New Orleans, LA 70130
Tel: (504) 593-0937
Fax: (212) 941-9407

Los Angeles Office
707 Wilshire Blvd., Suite 3850
Los Angeles, CA 90017
Tel: (213) 223-2442
Fax: (213) 955-9250

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The costs and benefits of incarcerating low-level drug offenders

Christian Henrichson

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Cost-Benefit Analysis

Sep 5, 2013

This post originally appeared on the blog of the Cost-Benefit Knowledge Bank for Criminal Justice (CBKB), a Vera project.

When U.S. Attorney General Eric H. Holder Jr. spoke to the American Bar Association recently about a range of criminal justice issues, it was his announcement of a change in policies for charging low-level drug offenders that made headlines. As the *New York Times* explained, Holder has instructed federal prosecutors not to write the specific quantity of drugs involved when drafting indictments for nonviolent drug defendants who have neither a criminal history nor a significant tie to a cartel or large-scale gang. This change is expected to reduce the length of sentences that would have been triggered by mandatory-minimum laws because of the quantities of drugs involved.

Nearly half of all federal inmates are serving time for drug-related crimes. And because longer sentences result in bigger prison populations, the directive is intended to better target scarce resources. As the Attorney General explained:

"By reserving the most severe penalties for serious, high-level, or violent drug traffickers, we can better promote public safety, deterrence, and rehabilitation—while making our expenditures smarter and more productive."

How can cost-benefit analysis (CBA) generate information that will lead to better use of prison resources?

CBA has been used to evaluate evidence-based interventions such as drug courts and early childhood education. It can also measure how the benefits of a prison sentence compare with the cost, by drawing on research about the diminishing crime-reducing effects of incarceration.

A 2007 report from the Oregon Criminal Justice Commission uses this research on prison economics to demonstrate how the public safety returns on incarceration declined as the inmate population increased: A dollar spent on prison returned $1.03 in 2005, as compared with $3.31 in 1994.

The Oregon report also highlighted how the cost-effectiveness of incarceration varies based on the severity of the offense. In 2005, each dollar the state spent to incarcerate a violent offender yielded $4.35 in public safety benefits. The cost of incarcerating drug offenders, however, far exceeded the benefits: every dollar invested in incarcerating drug offenders yielded $0.35 in public safety benefits, meaning that the costs were roughly three times more than the benefits. (See page 11 of Oregon's report for more details.)

The analysis focused on the budgetary costs of prison. But as Attorney General Holder explained, widespread incarceration also creates "human and moral costs that are impossible to calculate." During times of fiscal constraint there is intense pressure to spend our budget dollars more wisely. But it is always critical to comprehensively weigh the costs and benefits when deciding how to best advance justice and improve public safety.

This post is part of a series in which Vera experts respond to Attorney General Eric Holder's recent address to the American Bar Association calling for comprehensive criminal justice reform. Share your thoughts in the comments section below and search for the hashtag #VeraResponds on Twitter to join the conversation.

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NEW YORK
233 Broadway, 12th Floor
New York, NY 10279
Tel: (212) 334-1300
Fax: (212) 941-9407

WASHINGTON DC
1100 First St NE, Suite 950
Washington, DC 20002
Tel: (202) 465-8900
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NEW ORLEANS
546 Carondelet Street
New Orleans, LA 70130
Tel: (504) 593-0937
Fax: (212) 941-9407

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707 Wilshire Boulevard, Suite 3850
Los Angeles, CA 90017
Tel: (213) 223-2442
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